

NATIVE ENDANGERED & THREATENED SP. HABITAT CONSERVATION PLAN
ENDANGERED & THREATENED WILDLIFE**Permit Number: TE85617C-0**

Effective: 06/04/2019 Expires: 06/03/2046

Issuing Office:

Department of the Interior
U.S. FISH & WILDLIFE SERVICE
Endangered Species Permit Office
5600 American Boulevard, West, Suite 990
Bloomington, MN 55437-1458
permitsR3ES@fws.gov

ASSISTANT REGIONAL DIRECTOR - ECOLOGICAL SERVICES

Permittee:

HEADWATERS WIND FARM LLC
808 TRAVIS STREET, SUITE 700
HOUSTON, TX 77002
U.S.A.

Name and Title of Principal Officer:

BRIAN HAYES - EXECUTIVE VICE PRESIDENT, ASSET OPERATIONS

Authority: Statutes and Regulations: 16 USC 1539(a), 16 USC 1533(d); 50 CFR 17.22, 50 CFR 17.32, 50 CFR 13.

Location where authorized activity may be conducted:

The Permit Area includes the area in Randolph County, Indiana in which all turbines are located as well as all easements, fee lands, and land leased for other facilities associated with the project, as described in HCP section 1.4, and shown in HCP figure 1.2.

Reporting requirements:

ANNUAL REPORT DUE: 01/31

See permit conditions for reporting requirements

Authorizations and Conditions:

- A. General conditions set out in Subpart B of 50 CFR 13, and specific conditions contained in Federal regulations cited above, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. Valid for use by permittee named above. The validity of this permit is also conditioned upon strict observance of all applicable foreign, state, local tribal, or other federal law.
- C. Acceptance of this permit serves as evidence that the Permittee and its authorized agents understand and agree to abide by all of the terms of the permit and all sections of title 50 Code of Federal Regulations, parts 13 and 17, pertinent to issuance of incidental take permits. Section 11 of the Endangered Species Act of 1973, as amended (ESA), provides for civil and criminal penalties for failure to comply with permit conditions.
- D. The person listed above must counter-sign the permit to acknowledge receipt and signify agreement to fully abide by and implement this permit. You must return an original signature copy to the Field Office listed below in condition S.

Permittee Signature: _____ **Date:** _____

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- E. The authorization granted by this permit is subject to compliance with, and implementation of the Indiana Bat and Northern Long-eared Bat Habitat Conservation Plan for Headwaters Wind Farm, Randolph County, Indiana (HCP), executed by Headwaters Wind Farm I, LLC (the Permittee) and the U.S. Fish and Wildlife Service (Service). This permit and the HCP are binding upon the Permittee, and any authorized officer, employee, contractor, or agent conducting permitted activities.
- F. The Permittee will be responsible for implementing the terms and conditions of the HCP, incidental take permit (ITP), and the bird and bat conservation strategy (BBCS). The Permittee will allocate sufficient personnel and resources to ensure the effective implementation of the HCP, and the ITP. If the Permittee fails to implement the terms and conditions, then this permit will be considered to be in violation.
- G. The authority issued to the Permittee applies to all of the Permittee's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors. The Permittee is liable for any permit violations that occur by any of the persons and/or entities referenced in this paragraph or by any other persons and/or entities under the control of the Permittee. The Permittee shall conduct an educational program to inform all such persons and entities of this permit and the HCP's terms and conditions, and the Permittee shall be responsible for supervising their compliance with those terms and conditions. All applicable contracts between the Permittee and such persons and entities, where relevant, shall require their compliance with the HCP and this permit.
- H. The Permittee is authorized under the Endangered Species Act of 1973, as amended (Act), to incidentally take the federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*Myotis septentrionalis*), to the extent that take of these species would otherwise be prohibited under section 9 of the Act, and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Take must occur incidental to otherwise lawful activities associated with operation of the Headwaters Wind Farm as described in the HCP, and as conditioned herein. Activities associated with management of mitigation lands are also authorized.
- I. The Permittee will provide funding assurance for the HCP in the form of a bond or guaranty from a Surety. The bond or guaranty will provide funds for additional mitigation and contingencies for changed circumstances in advance of the time at which they are needed.
- J. A copy of this permit must be in possession of the Permittee and designated agents while conducting covered activities.
- K. Unless the permit is amended, suspended, revoked, or terminated, the permit duration is 27 years. The ITP should be amended when the Permittee significantly modifies the covered activities, the Project, or the conservation plan as described in the original HCP.
- L. This permit authorizes the take of up to 258 Indiana bats and 68 northern long-eared bats over the 27-year permit term. Take coverage applies to the spring migration season (April 1 to May 15), the summer season at 10 turbines with summer risk (May 16 to July 31), and to the fall migration season (August 1 to October 15) during the 27-year operation life of the project. Adaptive management will be implemented if any short or long-term trigger has been met as calculated using Evidence of Absence software (HCP section 5.4.3).
- M. The Permittees shall ensure that all minimization and mitigation activities set forth in the HCP are carried out as more fully described therein, including by way of example, but not limited to:
- Feathering of turbine blades below a wind cut-in speed of 3.5 meters per second (m/s) from ½ hour before sunset to ½ hour after sunrise when ambient temperature is above 10°C from April 1 to May 15 (section 5.2.2)
 - Feathering of turbines blades below a wind cut-in speed of 5.0 m/s at 10 turbines with summer risk from ½ hour before sunset to ½ hour after sunrise when ambient temperature is above 10°C from May 16 to July 31 (section 5.2.2)
 - Feathering of turbines blades below a wind cut-in speed of 3.0 m/s at 90 turbines without summer risk from ½ hour



- before sunset to ½ hour after sunrise when ambient temperature is above 10°C from May 16 to July 31 (section 5.2.2)
 - Feathering of turbine blades below a wind cut-in speed of 5.0 m/s from ½ hour before sunset to ½ hour after sunrise when ambient temperature is above 10°C from August 1 to October 15 (section 5.2.2)
 - Cave gating of a Priority 2 Indiana bat hibernaculum (section 5.3.2)
 - Protection of known Indiana and northern long-eared bat summer habitat (section 5.3.3)
 - Protection of swarming habitat surrounding a Priority 1 Indiana bat hibernaculum (section 5.3.3)
 - Any tree clearing needed for maintenance or decommissioning activities will occur between October 1 and March 31 (section 2.1.2)
 - Feathering of turbine blades to prevent spinning immediately upon decommissioning (section 2.1.3)
- N. The Permittee shall ensure that all monitoring activities set forth in the HCP are carried out as more fully described therein (section 5.4), including by way of example, but not limited to:
- Take compliance monitoring - carcass searches from April 1 to October 15 each year for the first three years, then every sixth year for the life of the permit.
 - Collection of hair and tissue samples from all bat carcasses found during take compliance monitoring
 - DNA analysis of older and/or scavenged carcasses of all potential *Myotis* species
 - Summer/swarming mitigation monitoring
 - o Habitat suitability and colony presence surveys one year prior to acquiring summer habitat
 - o Surveys every two years after implementation of summer/swarming habitat mitigation
 - o Invasive species monitoring every seven years after implementation of summer/swarming habitat mitigation
 - Winter mitigation monitoring - in the event the KYDNR and/or the Service cannot complete scheduled monitoring. Upon any breach in the cave gate security, the Permittees will remedy the breach within 24 hours.
- O. The Permittee shall ensure that all reporting requirements set forth in the HCP are carried out as more fully described therein (section 5.4.4), including by way of example, but not limited to:
- Notification within 24 hours if any eagles or federally listed species casualties are discovered
 - Delivery of all *Myotis* species and any unknown bat carcasses to the Service's Indiana Field Office within seven days of collection, for concurrence or determination of species identification
 - Notification within 48 hours of any operational changes made to the facility as a result of adaptive management
 - Submission of a letter, by March 1 of each year, indicating that the Permittee has executed a contract(s) with a qualified party(s) to complete all required monitoring activities
 - Annual report submitted to the Service by January 31 that includes:
 - o Results from take compliance monitoring and estimates of bat mortality



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- o Adaptive management changes that were implemented
 - o Raw data sheets from take compliance monitoring
 - o Data showing timing, wind speeds, and temperature at which turbines were operational and feathered from April 1 - October 15
 - o Methods and results of summer/swarming and winter habitat mitigation, if not provided by a third-party mitigation implementing entity
- P. Bat carcasses not used for bias correction trials and all tissue and hair samples collected will be made available to the Service upon request.
- Q. The Permittee will comply with the changed circumstances and adaptive management processes for minimization and mitigation measures (sections 8.2. and 5.4, respectively).
- R. The Wildlife Incident Reporting System (WIRS) will be in place for the life of the permit (section 5.4.1.1).
- S. For the purposes of monitoring, compliance, reporting, and administration of the terms of this permit, except where otherwise specified in the HCP, the contact office for the Service shall be: Indiana Ecological Services Field Office, 620 S. Walker Street, Bloomington, IN 47403, (812)334-4261. The Permittee shall refer to permit number TE85617C-0 in all correspondence and reports concerning permit activities.
- T. The Federal "No Surprises" Rule, 63 FR 8859 (February 23, 1998; codified at 50 CFR §§ 17.3, 17.22(b)(5), 17.32(b)(5)) provides assurances to the Permittee, provided that the Permittee has properly implemented the HCP, and the ITP.